

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 99-0183**  
**Withholding Tax and Sales Tax**  
**Responsible Officer**  
**For the Tax Period August 1, 1992-December 31, 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**1. Sales and Use and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-3-4-8(f), IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was an incorporator, shareholder, and officer of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period August 1, 1992-December 31, 1994. The taxpayer was personally assessed for the taxes, penalties and interest. The taxpayer protested these assessments and a hearing was scheduled. The taxpayer did not appear for the hearing. This Letter of Findings was based upon the information in the file.

**1. Sales and Withholding Tax-Responsible Officer Liability**

**DISCUSSION**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that assessment is incorrect. IC 6-8.1-5-1 (b).

The issue to be determined in this case is whether or not the taxpayer was a person who was responsible for remitting the corporate trust taxes to the Indiana Department of Revenue. The taxpayer failed to appear at the scheduled hearing or send in any documentation other than a personal letter indicating that he did not think he was personally responsible for remitting the corporate trust tax liabilities to the state. This letter is inadequate to overcome the presumption that the tax assessment is correct. Therefore, the taxpayer failed to sustain his burden of proving that the trust taxes were incorrectly assessed against him personally.

### **FINDING**

The taxpayer’s protest is denied.